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SJC-12109

COMMONWEALTH vs. EDWARD ADUAYI.

Norfolk. September 13, 2021. - December 6, 2021.

Present: Budd, C.J., Gaziano, Lowy, Cypher, & Kafker, JJ.

Homicide. Criminal Responsibility. Insanity. Jury and Jurors.  
Evidence, Insanity, Verbal completeness. Practice,  
Criminal, Jury and jurors, Voir dire, Redaction,  
Instructions to jury, Capital case.

Indictment found and returned in the Superior Court Department on September 9, 2010.

The case was tried before Raymond J. Brassard, J.

Dennis Shedd for the defendant.  
Michael McGee, Assistant District Attorney, for the Commonwealth.

GAZIANO, J. On April 3, 2015, the defendant was convicted of murder in the first degree in the stabbing death of twenty-eight year old Karneetha Sanders, with whom the defendant had been involved in an extramarital relationship. On the evening of July 7, 2010, the victim's family and boyfriend reported her

as missing to the Randolph police department. A search ensued, leading the police to the defendant's family store in Randolph in the early morning hours of July 8, 2010. There, they found the defendant and the victim's partially dismembered body. The victim had been stabbed eighty-three times.

At trial, the defendant conceded that he had stabbed the victim, but he asserted a lack of criminal responsibility for her death. In this direct appeal from his conviction, the defendant challenges the judge's decision to seat a juror who disclosed concerns about infidelity during voir dire; the manner in which the defendant's interview with police had been redacted; and the judge's instruction to the jury on the consequences of a verdict of not guilty by reason of insanity. Having carefully reviewed the defendant's claimed errors, as well as the entire record pursuant to our duty under G. L. c. 278, § 33E, we discern no reason to grant a new trial or to reduce the degree of guilt. Accordingly, we affirm the conviction.

1. Background. We recite the facts that the jury could have found, reserving certain details for our discussion of particular issues.

a. The Commonwealth's case. The Commonwealth proceeded at trial on theories of deliberate premeditation and extreme

atrocious or cruel. The jury convicted the defendant of murder in the first degree under both theories.

After he came to the United States from Nigeria, the defendant lived in Abington with his wife and adult children; his family began selling hair products and beauty supplies at various stores in the Commonwealth. The events at issue center around a store in Randolph, where the victim shopped. There, she met the defendant, and the two began having an affair. In addition to the sexual relationship, the defendant bought the victim food, sent her money, gave her hair products, and drove her to and from work.

In April or May of 2010, the victim began dating Raymond Ruffin, but stayed in contact with the defendant.<sup>1</sup> The victim's aunt, who was aware of the victim's relationship with the defendant, testified that the aunt "was under the impression that [the victim] was dwindling away from [the defendant] to date . . . Ruffin." Ruffin testified to having been aware that the victim had been "involved with somebody," but said that he thought the relationship had ended. On July 6, 2010, Ruffin spent the night at the victim's apartment in Randolph. The next morning, at around 9:30 A.M., Ruffin left for work while the victim remained in bed; she was uninjured.

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<sup>1</sup> The victim and the defendant exchanged text messages in June and July of 2010, some of which were sexually explicit.

The Commonwealth introduced cellular telephone records for the defendant's and the victim's telephones, to show their communications and movements on July 7 and 8, 2010. These included both call records and cell site location information (CSLI), which were introduced by two State police officers, one of whom was an expert on digital evidence, and one of whom was an expert on CSLI.<sup>2</sup> Between 10:33 and 11 A.M. on July 7, 2010, the defendant's telephone called the victim's telephone six times, but the calls were not answered. Between 12:19 and 12:34 P.M., four additional such calls were placed. The victim called the defendant twice, once at 11:04 A.M. and again at 12:22 P.M. One of these calls connected and lasted two minutes and thirty-five seconds; the other call was canceled before connecting. CSLI showed that the location of the cellular telephones converged during this period. From 10:30 to 11:30 A.M., the victim's telephone connected to cell towers in

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<sup>2</sup> Cell site location information "refers to a cellular telephone service record or records that contain information identifying the base station towers and sectors that receive transmissions from a [cellular] telephone" (citation omitted). Commonwealth v. Augustine, 467 Mass. 230, 231 n.1 (2014), S.C., 470 Mass. 837 (2015). "It is a record of a subscriber's cellular telephone's communication with a cellular service provider's base stations (i.e., cell sites or cell towers) during calls made or received; this identifies the approximate location of the active cellular telephone handset within [the cellular service provider's] network based on the handset's communication with a particular cell site" (quotation and citations omitted). Commonwealth v. Estabrook, 472 Mass. 852, 853 n.2 (2015).

Randolph, and the defendant's telephone connected to a tower in Boston. From 11:31 A.M. to 12:30 P.M., the victim's cellular telephone remained in Randolph, while the defendant's cellular telephone moved from Boston to Braintree to Abington and then to Avon. At 12:32 and 12:34 P.M., both telephones connected to cell towers in Randolph.

The victim did not report to work at 3 P.M., the usual start of her shift. Between around 6 and 8 P.M., the defendant drove a red Nissan Murano sport utility vehicle (SUV) to pick up his sons, who were coming home from work. After dropping them off at the family home in Abington, the defendant left in the Nissan Murano. He stopped at a department store in Avon and a package store in Randolph, where he bought two bottles of Corona beer. A package store employee noticed that the defendant was wearing pink sandals and joked about them. The defendant told the employee that they belonged to his daughter and that he had been in a hurry.

At around 11 P.M., the victim's aunt and mother and Ruffin went to the Randolph police department to report the victim as missing. The victim's aunt told police that she thought the victim might be with the defendant. She described the defendant as "being of African descent with the name Eddie" and "in his late fifties." She also provided the name of his hair products business. Police identified the defendant and began searching

for both him and the victim. At around 12:30 A.M., an officer went to the store in Randolph; there were no vehicles in the parking lot, and the store appeared closed and empty. Officers contacted the victim's cellular service provider and requested that it "ping" the victim's cellular telephone every ten minutes.<sup>3</sup> The victim's cellular telephone was at latitude and longitude positions in Milton, Randolph, Avon, and Holbrook until about 3 A.M., when it was located at a road in Randolph near the defendant's family business. Police returned to the store and saw a red Nissan Murano parked behind the building. Believing that the driver might have been inside, officers knocked on the doors and windows of the building, but they received no response. They remained in the area, and at around 5:30 A.M., police heard a banging noise coming from the store's rear bulkhead door, which was locked. Officers asked the person on the other side to open the door, but he said that he was locked inside. Emergency responders forced open the door and saw the defendant standing at the bottom of the basement stairs.

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<sup>3</sup> A police officer who had participated in the investigation explained that when a cellular service provider "pings" a cellular telephone in response to a police request, the provider causes the telephone to reveal its real-time global positioning system (GPS) location at the time of the ping. See Commonwealth v. Almonor, 482 Mass. 35, 38-39 (2019). Once the location is revealed, the service provider relays the cellular telephone's GPS coordinates to the police. See id. at 39.

Detective David Clark of the Randolph police department testified to the defendant's demeanor and statements at the store. Clark met the defendant outside the store and noticed that he appeared nervous and sweaty. The defendant was wearing a black shirt and underwear and had blood on his thigh. Clark asked the defendant "if [the victim] was with him." The defendant said that she was inside and that she had stabbed herself. Clark then read the defendant the Miranda rights and asked, "[I]s the victim inside?" The defendant acknowledged that he understood these rights and then responded that she was in a barrel. Another officer thereafter handcuffed the defendant and took him to the Randolph police station. While being transported to the station, the defendant asked, "Am I in trouble?"

Police found the victim's partially dismembered body in a trash barrel in the basement. In a trash bag on the top of a furnace, they found her left hand and forearm, a hair extension attached to a piece of scalp, and a bloodied meat cleaver. Bloodstains on the meat cleaver matched the victim's deoxyribonucleic acid (DNA) profile.

Stains on the floor tested positive for blood, but DNA testing was not conducted on those samples. Police found other bloodstained items in the basement, including a pair of women's pants and pink sandals. They also recovered two empty Corona

beer bottles and a pair of men's pants. Inside the pockets of the men's pants, police found the defendant's and the victim's cellular telephones, and a receipt dated July 7, 2010, with the time 9:40 P.M., indicating the purchase of a meat cleaver and a lighter from the department store at which the defendant had stopped. Both cellular telephones tested positive for nonvisible blood. Experts also examined the interior of the Nissan Murano, which tested positive for the presence of nonvisible blood. DNA swabs from the SUV revealed a mixture of three DNA profiles, including the defendant's and the victim's.

The medical examiner identified eighty-three knife wounds on the victim's body. She stated that, based on an analysis of the hemorrhaging around each wound, forty-nine of them likely were inflicted before the victim died. The medical examiner also noted that the victim had more than ten blunt impact injuries to the head, torso, and extremities. She testified that the victim died from blood loss from the cumulative effect of the multiple wounds. In her opinion, the stab wounds were made by a blade about one inch wide and up to five inches long.

At around 6:30 A.M. on July 8, 2010, police again gave the defendant Miranda warnings. The defendant waived his Miranda rights and agreed to speak with police. Officers then interviewed him for approximately four hours at the Randolph police station. An officer noted that the defendant had a cut

on his hand, but the officer determined that the cut did not require medical treatment. A forensic scientist who collected samples from the blood on the defendant testified that the defendant also had a cut on his foot. The defendant initially told the officers that the victim had stabbed herself multiple times. He said that when he went to meet with her at about 1:30 P.M. on July 7, 2010, he told her that he wanted her to move on from their relationship, that he was tired of financially supporting her, that he had been following her around to determine if she was involved with another man, and that if she was dating someone else, that person should be supporting her. Toward the end of the interview, however, the defendant said that he had stabbed the victim in self-defense after she pulled out a knife and cut his hand. A friend of the victim testified that, approximately one year prior to July 2010, he had given the victim a knife that was about four inches long. Police did not find a knife at the scene and did not later recover the knife used in the stabbing. Following the defendant's interview, he was brought to be arraigned.

Detective Michael Tuitt of the Randolph police department testified that, while in a police cruiser, the defendant, unprompted, said, "[S]he stabbed me, I lost it, and I just stabbed her again and again."

b. The defendant's case. In support of his defense that he had lacked criminal responsibility at the time of the stabbing, the defendant introduced testimony by two psychiatrists who had treated him, as well as testimony by four of his adult children. In rebuttal, the Commonwealth introduced testimony by two other experts: one had evaluated the defendant for competency several years prior to trial, on the Commonwealth's motion; and the other had evaluated the defendant in March of 2014.

Psychiatrist Dr. Patricia Pickett had been the defendant's treating mental health practitioner at the Norfolk County house of correction from July 12, 2010, shortly after his arrest, until March 6, 2015, less than one week before trial. The defendant was referred to Pickett because he had been screaming since he was brought to the jail. Pickett performed an initial evaluation of the defendant on July 12, 2010, and diagnosed him with bipolar disorder with psychotic features.<sup>4</sup> She prescribed a mood stabilizer as well as an antipsychotic medication. Pickett testified that, during the evaluation, the defendant reported a history of depression and stated that he once previously had been prescribed psychiatric medications. The defendant also

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<sup>4</sup> Dr. Patricia Pickett testified that, at the time of her initial evaluation, the defendant wore a suit designed for individuals who were deemed at risk of committing suicide.

told Pickett that, since he was in his late thirties, he had experienced visual and auditory hallucinations urging him to "kill, destroy, drive fast and do crazy things." Pickett continued treating the defendant, and on September 7, 2011, she updated her diagnosis to psychosis, not otherwise specified. She testified that bipolar disorder or psychosis could lead to violence.

Four of the defendant's adult children, Susan, Samuel, Nina, and Michael Aduayi,<sup>5</sup> testified to the defendant's long-time disturbed mental state. Susan testified that the defendant had been committed to a mental health facility when he lived in Nigeria. Nina recalled that, in May of 2010, she saw the defendant sitting in the living room, alone and in the dark. In June of 2010, the defendant was speaking to himself while sitting on the porch of the family's Abington home. After the defendant returned from a 2010 trip to Nigeria, he began chain smoking for the first time in twenty years, and experienced difficulty sleeping. The children also described a number of violent episodes, during which the defendant would become enraged. On one occasion, in around 2005, the defendant became frustrated with his then fourteen year old son Michael and struck him in the head with a wooden spoon and a vacuum cleaner.

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<sup>5</sup> Because the children share a last name, we refer to them by their first names.

Twice in 2008, while he was heavily intoxicated, the defendant forced entry into the Abington home after his wife refused to let him into the house. Susan also testified that, in 2009, the family suspected the defendant of stealing money from the store in Randolph and thereafter changed the locks.

The defendant underwent two evaluations pursuant to G. L. c. 123, § 15, to determine whether he was competent to stand trial. The first took place shortly after his arrest, from August 6, 2010, through September 2010. A second competency evaluation was conducted, at the Commonwealth's request, from December 2013 to January 2014. On both occasions, the defendant was temporarily committed to Bridgewater State Hospital (Bridgewater) pursuant to G. L. c. 123, § 15 (b). The defendant and the prosecutor each introduced testimony by experts who had been involved in the evaluations.

The defendant called Dr. Michael McGuire, the supervising psychiatrist at Bridgewater, who examined the defendant during the second evaluation. McGuire testified that, upon the defendant's admission to and discharge from Bridgewater, he was diagnosed with psychosis, not otherwise specified. The prosecutor offered testimony by Dr. Charles Carroll, the director of forensic services at Bridgewater, who examined the defendant during both the 2010 and 2013 evaluations. In 2010, Carroll had diagnosed the defendant with adjustment disorder

with depressed mood, but Carroll assessed the defendant as malingering with respect to his symptoms of auditory hallucinations. During the 2013 evaluation, Carroll again assessed that the defendant was malingering as far as his reported auditory hallucinations.

The prosecutor also called Dr. Russell Vasile, a psychiatrist who never treated the defendant but had conducted a later evaluation at the Commonwealth's request, to determine whether the defendant was criminally responsible on July 7 and 8 of 2010, as described in Commonwealth v. Hanright, 465 Mass. 639, 643-645 (2013). Vasile testified that he had reviewed the defendant's statement to police, the surveillance footage from the department store and the package store, and the defendant's medical records. He also met with the defendant on March 28, 2014. Vasile opined that the defendant had not been suffering from a mental disease or defect on July 7 or 8 of 2010. In particular, Vasile pointed to the defendant's conduct on those dates as constituting purposeful behavior. Vasile opined that the defendant's behavior at the time thus was inconsistent with psychosis.

2. Discussion. The defendant challenges the judge's decision to seat a juror who disclosed concerns about infidelity during voir dire; the manner in which the defendant's interview with police had been redacted; and the judge's instruction to

the jury on the consequences of a verdict of not guilty by reason of insanity. He contends that these errors, taken together, require a new trial. We discern no likelihood of a miscarriage of justice in the first two claims, and no error in the third. Having carefully reviewed the record pursuant to our duty under G. L. c. 278, § 33E, we also discern no reason to exercise our extraordinary authority under that statute to order a new trial or to reduce the degree of guilt.

a. Jury selection. The defendant argues that the judge erred in seating juror no. 2 after the juror disclosed concerns about infidelity during voir dire, thus violating the defendant's right to an impartial jury given the circumstances of the crime and the issues before the jury. Because the defendant did not object at trial, we consider whether there was error and, if so, whether the error created a substantial likelihood of a miscarriage of justice. See Commonwealth v. Wright, 411 Mass. 678, 681 (1992), S.C., 469 Mass. 447 (2014).

At the beginning of jury selection, and at the prosecutor's suggestion, the judge told the members of the venire to expect questions from the attorneys about any particularly strong views they might have concerning extramarital affairs.

During individual voir dire, the judge had the following exchange with juror no. 2:

Q.: "But I'm sure you remember, sir, that the case here involves a charge of murder. If you were on that jury, would you be able to give a fair verdict to both sides, the prosecution and the defense?"

A.: "Yeah, the one thing I was thinking in terms of the infidelity question, I think there are some character traits related to that that I think might be potentially an issue."

Q.: "All right. Well, would you consider all of the evidence in the case, if there is any such evidence, relating to one or both of the parties, the defendant himself and the alleged victim, would you be able to consider that in conjunction with all of the other evidence in the case in a fair way, sir?"

A.: "Yes."

The prosecutor then questioned juror no. 2 about his views on infidelity:

Q.: "And, as I have mentioned and [defense counsel] had mentioned, also, concerning infidelity, and you did have some concern about it with His Honor, understanding that evidence is expected to come in that [the defendant] was married and [the victim] was also involved at the time with someone else and that both of these people may have been in committed relationships, would that affect your ability to render a fair and impartial verdict in this case?"

A.: "Like I was saying, I think there are some character traits in people that commit infidelity that I kind of have pre thought of in my mind, so I was concerned about that."

Q.: "And after His Honor had followed up on that and you had an opportunity to reflect, is it your -- do you feel that you could evaluate this case just on its evidence and not carrying in that notion as far as evaluating someone's credibility or character on that aspect of something they may have done, whether it be [the victim] or [the defendant]?"

A.: "I believe I have the ability to do that."

Defense counsel also asked juror no. 2 about his views on the question of infidelity:

Q.: "I don't mean to unduly pry, but you mentioned some character traits that might affect your I take it your ability to be impartial. Would you just give us an idea of what you meant by your phraseology, some character traits might affect your ability to sit on this jury?"

A.: "No problem. The first thing is I've always thought that people that commit infidelity kind of think that they're beyond kind of the law or beyond kind of -- they can get away with things more than other people from a character perspective."

Q.: "Well, if you knew that [the defendant] had been in a relationship with a young woman while he was married, if that was a fact in this case, would that affect your ability to sit as a juror, as an impartial juror?"

A.: "I would think it wouldn't persuade myself. I think I'd be factual, but I've never sat on a jury before, and I know it's going to be very difficult."

Q.: "Well, let's say that I say to you that that's a fact, that [the defendant] was involved in an extra-marital relationship with the decedent -- there are all kinds of other facts -- but would that fact alone be such as to prevent you from otherwise being impartial?"

A.: "Without hearing the facts, I think it could."

Neither the prosecutor nor defense counsel challenged seating of the juror.

The Sixth Amendment to the United States Constitution and art. 12 of the Massachusetts Declaration of Rights entitle a criminal defendant to a trial before an impartial jury.

Commonwealth v. Williams, 481 Mass. 443, 447 (2019). "[E]ach juror must be 'impartial as to the persons involved and

unprejudiced and uncommitted as to the defendant['s] guilt or past misconduct'" (alteration in original). Id., quoting Commonwealth v. Ricard, 355 Mass. 509, 512 (1969). "The presence of even one juror who is not impartial violates a defendant's right to trial by an impartial jury." Commonwealth v. Long, 419 Mass. 798, 802 (1995).

General Laws c. 234A, § 67A, identifies some considerations "which may cause a decision to be made in whole or in part upon issues extraneous to the case, including, but not limited to, community attitudes, possible exposure to potentially prejudicial material or possible preconceived opinions toward the credibility of certain classes of persons." "Where a prospective juror has expressed or formed an opinion regarding the case, or has an interest, bias, or prejudice related to the unique situation presented by the case, the judge must satisfy him- or herself that the prospective juror will set aside that opinion or bias and properly weigh the evidence and follow the instruction on the law" (quotation and citation omitted). Williams, 481 Mass. at 448. At the same time, "[a] judge need not probe into every conceivable bias imagined by counsel." Commonwealth v. Espinal, 482 Mass. 190, 198 (2019).

A judge's determination that a prospective juror is impartial is "essentially one of credibility, and therefore largely one of demeanor" (citation omitted). Commonwealth v.

McCowen, 458 Mass. 461, 493 (2010). See Commonwealth v. Emerson, 430 Mass. 378, 384 (1999), cert. denied, 529 U.S. 1030 (2000) ("Juror bias is a question of fact to be determined by the judge"). For that reason, a judge enjoys considerable discretion in making such a determination. See Commonwealth v. Kennedy, 478 Mass. 804, 818 (2018). A judge's decision will be reversed only for an abuse of discretion. Commonwealth v. Perez, 460 Mass. 683, 688-689 (2011).

When juror no. 2 expressed concerns about infidelity, the judge asked the juror whether he would consider fairly all of the evidence, including the fact of infidelity by either party. Juror no. 2 answered, "Yes." The prosecutor also asked juror no. 2 if he could be impartial, and the juror answered, "I believe I have the ability to do that." Given these responses, and his observation of the juror's demeanor in making them, the judge reasonably could have satisfied himself that juror no. 2 would be able to set aside any opinions related to infidelity, properly weigh the evidence, and follow the judge's instructions. See Williams, 481 Mass. at 448; Kennedy, 478 Mass. at 818.

Citing Long, 419 Mass. at 804, the defendant argues that the judge erred in determining that juror no. 2 was unbiased because the juror "never expressly stated" that he could set aside his bias about infidelity. The defendant also points to

the juror's response to defense counsel. The facts in Long are distinguishable. There, we held that a judge committed error by seating a juror with an ethnic bias, who "never unequivocally stated that he would be impartial." Id. at 804. By contrast, here, when the judge asked juror no. 2 if he could weigh all of the evidence fairly, he replied, "Yes." The juror also responded similarly to the prosecutor's question whether he could be impartial, and answered, "I believe I have the ability to do that." "Jurors do not come to their temporary judicial service as sterile intellectual mechanisms purged of all those subconscious factors which have formed their characters and temperaments . . . ." Commonwealth v. Mutina, 366 Mass. 810, 817-818 (1975). See Commonwealth v. Colton, 477 Mass. 1, 16-17 (2017) (no abuse of discretion where judge asked if juror could be fair to defendant and government, and juror answered, "Yes, I think so").

The defendant also emphasizes that juror no. 2's "last word," in response to a question from defense counsel, was that the fact of infidelity could affect his impartiality. But a single response during attorney-conducted voir dire does not restrict the judge's discretion, where a juror already twice unequivocally has told the judge and the attorneys that he would be able to weigh the evidence fairly. See Kennedy, 478 Mass. at 818. For instance, in Kennedy, supra at 815-819, the

defendant argued that the judge erred by failing to explore jurors' conflicting responses during attorney-conducted voir dire. In that case, in response to voir dire questions by the judge, two jurors expressed concerns about infidelity, and the judge asked if their concerns would affect their ability to judge whether the defendant had committed a crime. They each confirmed that their concerns would not, and they were seated. Noting that attorney-conducted voir dire does not restrict the judge's discretion where the jurors' responses to the judge were unequivocal, we concluded that there had been no abuse of discretion. See id. at 818-819.

Similarly, here, where the juror unequivocally told the judge (and the prosecutor) that he would weigh the evidence fairly, juror no. 2's answer to defense counsel's question did not limit the scope of the judge's discretion. Because the judge had a sufficient basis reasonably to conclude that juror no. 2 would be able to set aside his opinions about infidelity, properly weigh the evidence, and follow the judge's instructions, there was no abuse of discretion in the judge's decision to seat juror no. 2. See Perez, 460 Mass. at 688-689.

b. Redaction. The defendant also challenges the manner in which the defendant's interview with police was redacted before the audio-video recording was played for the jury. He argues that the redactions produced an apparent juxtaposition of

responses that could have misled the jury as to the defendant's actual statements. According to the defendant, the redaction made it appear as though the defendant had said that he wanted the victim to kill herself, when in actuality he had responded to a police question about the victim's actions by saying that he wanted their relationship to end.

During the interview, an officer asked the defendant:

Q.: "But you want, you want me to believe that she stabbed herself to death. Right? That's what you want me to believe?"

A.: "Yeah."

. . .

Q.: "You couldn't let her go. You couldn't let her go. She left you. You couldn't let her go. You couldn't accept that."

A.: "[Inaudible] that's what I wanted."

Q.: "That's what she wanted, Eddy."

A.: "That's what I wanted. [Inaudible]."

Before the end of jury selection, the parties stipulated to a redacted version of the audio-video recording of the interview. Before the interview was played for the jury, the judge had transcripts distributed to the jurors to help them follow the discussion, while instructing them that the audio-video recording, and not the transcript, was the evidence they were to consider. In the redacted version of the interview, police asked the defendant:

Q.: "But you want, you want me to believe that she stabbed herself to death. Right? That's what you want me to believe?"

A.: "Yeah."

. . .

A.: "[Inaudible] that's what I wanted."

Q.: "That's what she wanted, Eddy."

A.: "That's what I wanted. [Inaudible]."

The defendant argues that the manner in which the interview was redacted constituted error under the doctrine of verbal completeness. The defendant contends that the redaction may have misled the jury into thinking that the defendant said he wanted the victim to kill herself, and that such a statement would have been "compelling evidence" of deliberate premeditation and malice. The defendant also suggests that a statement indicating that he wanted the victim to die would have supported a finding of criminal responsibility, given other contradictory statements that he had made.

"When a party introduces a portion of a statement or writing in evidence the doctrine of verbal completeness allows admission of other relevant portions of the same statement or writing which serve to 'clarify the context' of the admitted portion" and prevent one side from "presenting a fragmented and misleading version of events to the finder of fact."

Commonwealth v. Carmona, 428 Mass. 268, 272 (1998), citing

Commonwealth v. Robles, 423 Mass. 62, 69 (1996). To be admissible, the relevant portion must be on the same subject as the admitted statement, part of the same conversation as the admitted statement, and necessary to the understanding of the admitted statement. Commonwealth v. Clark, 432 Mass. 1, 14 (2000).

As stated, the interview was presented to the jury as an audio-video recording; although they were provided a redacted transcript of the interview, they were explicitly instructed that the transcript was to assist them, but the actual evidence in the case was the recording and not the transcript. While the redacted transcript indeed might suggest that the defendant's answer, "That's what I wanted," was responsive to the officer's question, "[Y]ou want me to believe that she stabbed herself to death. Right?" the recording itself somewhat undermines that interpretation. Where there was a redaction, jurors saw the video frame abruptly skip. Given that the judge told the jury about the redactions, jurors could have concluded that the defendant's postredaction answer was not responsive to the officer's preredaction question but, rather, to a question that had been removed from their consideration.

Even if the jurors believed that the defendant's answer was responsive to the officer's question, that would not necessarily have prejudiced the defendant. In the recording, after the

redaction, the defendant said that he "wanted" something. Before the redaction, the officer had asked, "But you want, you want me to believe that she stabbed herself to death. Right? That's what you want me to believe?" Thus, a plausible interpretation of the exchange would have been that the defendant wanted the police to believe the victim stabbed herself, in which case it would have been cumulative of his earlier statements in the interview. See Commonwealth v. Hobbs, 482 Mass. 538, 556 (2019); Commonwealth v. Bart B., 424 Mass. 911, 915 (1997) ("The admission of cumulative evidence does not commonly constitute reversible error").

At the same time, the defendant's suggested interpretation would have been a reasonable, and perhaps the most reasonable, inference from the recording, and was further supported by the transcript, albeit that the jury were instructed that the transcript was not evidence. Because the officer's question was redacted, we cannot foreclose the possibility that some jurors concluded that the defendant said he wanted the victim to kill herself. The defendant's answer was in response to a question the jury never heard, part of a single exchange and on the same subject. Hearing the officer's question was necessary to understand the defendant's response, and therefore, if the defendant's answer was not redacted, the officer's question should have been admitted. See Clark, 432 Mass. at 14.

Nonetheless, had the jury interpreted the interview as the defendant suggests, the statement would have been cumulative of other evidence and outweighed by the overwhelming evidence of guilt. See Commonwealth v. Johnson, 429 Mass. 745, 749 (1999) (improperly admitted evidence did not create substantial likelihood of miscarriage of justice where evidence was largely cumulative, and evidence of guilt was overwhelming).

The defendant admitted to repeatedly stabbing the victim with a knife, and the jury heard testimony by the medical examiner that the victim suffered forty-nine sharp wounds before she died, evidence the jury also could have interpreted as deliberate premeditation and malice. See Commonwealth v. Whitaker, 460 Mass. 409, 419 (2011) (deliberate premeditation could be inferred from factors such as nature and extent of victim's injuries, duration of attack, and number of blows); Commonwealth v. Serino, 436 Mass. 408, 411 (2002) ("Malice, as it applies to deliberately premediated murder, means an intent to cause death"; element of malice was satisfied by choking victim for five to eight minutes, indicating intent to kill victim).

The defendant also argues that a statement indicating that he wanted the victim to die would have supported a finding of criminal responsibility, given other contradictory statements that he had made. Because the defendant raised the issue of

criminal responsibility, the Commonwealth had the burden to prove, beyond a reasonable doubt, that the defendant did not lack the substantial capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law, as a result of a mental disease or defect. See Commonwealth v. Berry, 457 Mass. 602, 612 (2010), S.C., 466 Mass. 763 (2014); Commonwealth v. Kappler, 416 Mass. 574, 578 (1993).

Even viewed as the defendant suggests, the single statement at issue here would have had but little, if any, effect on the jury's thinking concerning the defendant's ability to engage in deliberate premeditation. The jury also heard testimony by multiple police officers, the defendant's children, and other witnesses who interacted with the defendant on July 7 and 8 of 2010 and observed his demeanor, all of whose testimony reasonably could have been viewed as indicating the defendant had a substantial capacity to appreciate the wrongfulness of his conduct. Moreover, Vasile's testimony, based on an evaluation of the defendant's conduct on July 7 and 8 of 2010, directly addressed the issue of criminal responsibility and spoke explicitly to what Vasile viewed as the defendant's deliberate actions and ability to conform his conduct to the requirements of the law.

Given the overwhelming evidence in this case, and the defendant's other statements during the four-hour interview, as well as while being transported by the police, the redaction did not create a substantial likelihood of a miscarriage of justice. See Commonwealth v. Vazquez, 478 Mass. 443, 449-451 (2017) (erroneous introduction of evidence regarding defendant's threatening display of firearm did not create substantial likelihood of miscarriage of justice given overwhelming evidence from witnesses); Commonwealth v. Wall, 469 Mass. 652, 668 (2014) (erroneous admission of medical record did not create substantial likelihood of miscarriage of justice where evidence against defendant was overwhelming).

c. Jury instruction on consequences of verdict. The defendant argues that the judge abused his discretion in instructing the jury on the consequences of a verdict of not guilty by reason of a lack of criminal responsibility, because the instruction included time frames that, as a practical matter, could have been understood as minimizing the likelihood of a prolonged commitment. Because the defendant objected at trial, we review for prejudicial error. See Commonwealth v. Harris, 481 Mass. 767, 777 (2019).

At the time of the defendant's trial, the prevailing jury instruction with respect to a verdict of not guilty by reason of a lack of criminal responsibility, included in the 2013 Model

Jury Instructions on Homicide, was known as a "Mutina instruction." See, e.g., Commonwealth v. Waweru, 480 Mass. 173, 188 (2018). The Mutina instruction mentioned two relevant time periods. First, it explained that if a defendant were found not guilty by reason of a lack of criminal responsibility, the judge might order the defendant hospitalized at a mental health facility for a period of forty days for observation and examination. Second, the instruction noted that, if a defendant remained mentally ill and discharge would create a substantial likelihood of serious harm to the defendant or others, the defendant could be committed to a mental health facility or to Bridgewater for six months. See Model Jury Instructions on Homicide 11-12 (2013).

The defendant asked the judge to strike mention of the forty-day and six-month time periods from his instruction; the defendant argued that these periods would suggest to the jury that, if they returned a verdict of not guilty by reason of a lack of criminal responsibility, the defendant effectively could "walk out." The judge declined the defendant's request and instructed the jury, using essentially the same language as the Mutina instruction included in the 2013 Model Jury Instructions on Homicide:

"Again, you may not consider sentencing or punishment in reaching your verdict. However, I am going to tell you what happens to a defendant if he is found not guilty by

reason of lack of criminal responsibility. The Court may order the defendant, in that circumstance, to be hospitalized at a mental health facility for a period of forty days for observation and examination.

"During this observation period or within sixty days after a verdict of not guilty by reason of lack of criminal responsibility, the District Attorney or other appropriate authorities may petition the Court to commit the defendant to a mental health facility or to Bridgewater State Hospital.

"If the Court then concludes that the defendant is mentally ill and that his discharge would create a substantial likelihood of serious harm to himself or others, the Court may grant the petition and commit him to a proper mental facility or to Bridgewater State Hospital for six months.

"Periodically, the Court reviews the order of commitment. If the person is still suffering from a mental disease or defect and is still dangerous, he is kept in the mental facility. If the person is no longer mentally ill and can resume a normal life, he is discharged.

"The District Attorney must be notified of any hearing concerning whether the person may be released, and the District Attorney may be heard at any such hearing. However, the final decision on whether to recommit or release the person is always made by the Court."

The defendant then renewed his objection.

In Mutina, 366 Mass. at 822-823, we explained:

"If jurors can be entrusted with responsibility for a defendant's life and liberty in such cases as this, they are entitled to know what protection they and their fellow citizens will have if they conscientiously apply the law to the evidence and arrive at a verdict of not guilty by reason of insanity -- a verdict which necessarily requires the chilling determination that the defendant is an insane killer not legally responsible for his acts."

Approximately seven months after the defendant's conviction, we revisited the Mutina instruction in Commonwealth v. Chappell,

473 Mass. 191, 206 (2015). In that case, we held that an instruction that omits time periods "may better accomplish" the goals discussed in Mutina. See id. Since our decision in Chappell, supra, we have clarified that "it is not error for a judge to have given the Mutina instruction when it was the governing model jury instruction at the time of trial." See Waweru, 480 Mass. at 188-189. As our subsequent precedent makes clear, our decision in Chappell was "prospective only." Commonwealth v. Odgren, 483 Mass. 41, 54 (2019). See Waweru, supra; Commonwealth v. Piantedosi, 478 Mass. 536, 550 (2017); Commonwealth v. Dunn, 478 Mass. 125, 139 (2017); Commonwealth v. Griffin, 475 Mass. 848, 862 (2016).

At the time of the defendant's trial, in March and April of 2015, the 2013 Model Jury Instructions on Homicide were the governing instructions on the consequences of a verdict of not guilty by reason of a lack of criminal responsibility. Because the defendant's trial preceded our decision in Chappell, 473 Mass. at 206, that it would be better if the jury did not hear mention of the time frames the defendant challenges, the judge did not err in giving the Mutina instruction.

d. Review under G. L. c. 278, § 33E. The defendant does not ask us to exercise our extraordinary authority under G. L. c. 278, § 33E, to grant a new trial or to reduce the degree of guilt. Nonetheless, we have reviewed the entire record pursuant

to our duty under that statute and discern no reason to order a new trial or to reduce the degree of guilt.

Judgment affirmed.